



May 31, 2001

Ms. Victoria Benitez
Attorney at Law
P.O. Box 151374
Austin, Texas 78715-1374

OR2001-2251

Dear Ms. Benitez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 147793.

The Family Crisis Center of the Big Bend ("FCCBB") received a request for the following information:

- (1) Minute books of the corporation for the past twelve months.
- (2) Copy of advertisements placed seeking applicants for the position of Executive Director.
- (3) List of publications in which these advertisements were placed.
- (4) Names and addresses of all applicants for the position of executive director.
- (5) Copy of resumes of all applicants for the position of Executive Director.
- (6) Names of the members of the Board of Directors of the Crisis Center of the Big Bend who made up the committee which conducted the interviews of job applicants.
- (7) Copy of the recommendation of this committee which was made to the full board of directors of the Crisis Center, and if the recorded vote on the matter is not in the minutes, then which members of the Board of Directors

The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes “a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser.” Tex. Att’y Gen. No. JM-821 (1987), *quoting* ORD-228 (1979). That same opinion informs that “a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a ‘governmental body.’” Finally, that opinion, citing others, advises that some entities, such as volunteer fire departments, will be considered governmental bodies if they provide “services traditionally provided by governmental bodies.”

Id.

As the *Kneeland* court noted, when considering the breadth of the Act’s definition of “governmental body,” this office has distinguished between private entities receiving public funds in return for specific, measurable services and entities receiving public funds as general support. For example, Open Records Decision No. 228 (1979) considered whether the North Texas Commission (the “commission”), a private, nonprofit corporation chartered for the purpose of promoting the interests of the Dallas-Fort Worth metropolitan area, constituted a “governmental body” under the Act. The contract existing between the commission and the City of Fort Worth obligated Fort Worth to pay the commission \$80,000 per year for three years. *Id.* The contract obligated the commission to, among other things, “[c]ontinue its current successful programs and implement such new and innovative programs as will further its corporate objectives and common City’s interests and activities.” *Id.* at 2. Noting this provision, Open Records Decision No. 228 stated: “Even if all other parts of the contract were found to represent a strictly arms-length transaction, we believe that this provision places the various governmental bodies which have entered into the contract in the position of ‘supporting’ the operation of the Commission with public funds within the meaning of section 2(1)(F).” *Id.* Accordingly, the decision found the commission to be a governmental body for purposes of the Act. *Id.*

You inform us that FCCBB receives grants of public funds from the Texas Department of Human Services (“TDHS”), the Office of the Attorney General, and the Criminal Justice Division of the Office of the Governor. Having reviewed documents relating to these grants of public funds, we find that the public funds are used for the general support of FCCBB. Furthermore, FCCBB and TDHS have a common objective, namely, providing services to victims of family violence, such that an agency-type relationship exists between FCCBB and TDHS. *See* Hum. Res. Code § 51.001 *et seq.* For these reasons, we conclude that FCCBB is a governmental body for purposes of the Act. Accordingly, we will determine whether the submitted information must be released or is excepted from disclosure under the Act.

First, you state that there are no records in FCCBB's possession that are responsive to request item numbers 3, 8, 9, and 10. We note, however, that a governmental body has a good faith duty to relate a request to information held by it. Open Records Decision No. 561 at 8 (1990). Thus, for example, although you may not possess an actual list of publications in which advertisements were placed for the position of Executive Director, that information may be found in other documents that FCCBB maintains.

Next, we address your claim that some of the requested information is made confidential by section 51.007 of the Human Resources Code and is therefore excepted from disclosure under section 552.101 of the Act. Section 51.007 provides:

The department may not disclose any information gained through reports, collected case data, or inspections that would identify a particular center or a person working at or receiving services at a family violence shelter center.

"Department" means the Texas Department of Protective and Regulatory Services ("DPRS"). Hum. Res. Code § 40.001(3). Thus, section 51.007 only applies to records maintained by DPRS. Conversely, it does not apply to any of the records maintained by FCCBB.

We do find, however, that some of the submitted information is excepted from disclosure under the recently-enacted section 552.136 of the Act. The Seventy-seventh Legislature enacted Senate Bill 15 on May 3, 2001, which added section 552.136 to the Public Information Act and applies specifically to family violence shelter centers, including FCCBB.¹ Senate Bill 15 took effect on May 16, 2001, when the Governor signed it, and provides, in relevant part, as follows:

**Section 552.136. EXCEPTION: FAMILY VIOLENCE SHELTER CENTER
AND SEXUAL ASSAULT PROGRAM INFORMATION**

(a) In this section:

(1) "Family violence shelter center" has the meaning assigned by Section 51.002, Human Resources Code.

¹The Legislature also enacted two other bills that added a section 552.136 to the Public Information Act. One is House Bill 2589, which makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The other is Senate Bill 694, which makes credit card, debit card, charge card, and access card numbers confidential. *See* Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.136). In addition, Senate Bill 694 enacted the same language from House Bill 2589 regarding the confidentiality of e-mail addresses, but codified it as section 552.137 of the Act. As of the date of this letter ruling, both bills await the Governor's signature.

(2) "Sexual assault program" has the meaning assigned by Section 420.003.

(b) Information maintained by a family violence shelter center or sexual assault program is excepted from the requirements of Section 552.021 if it is information that relates to:

- (1) the home address, home telephone number, or social security number of an employee or a volunteer worker of a family violence shelter center or a sexual assault program, regardless of whether the employee or worker complies with Section 552.024;
- (2) the location or physical layout of a family violence shelter center;
- (3) the name, home address, home telephone number, or numeric identifier of a current or former client of a family violence shelter center or sexual assault program;
- (4) the provision of services, including counseling and sheltering, to a current or former client of a family violence shelter center or sexual assault program;
- (5) the name, home address, or home telephone number of a private donor to a family violence shelter center or sexual assault program; or
- (6) the home address or home telephone number of a member of the board of directors or the board of trustees of a family violence shelter center or sexual assault program, regardless of whether the board member complies with Section 552.024.

Act of May 3, 2001, 77th Leg., R.S., S.B. 15, § 1 (to be codified at Gov't Code § 552.136). You must withhold all of the information within the submitted documents that is protected from disclosure by section 552.136 of the Act. On the other hand, any responsive information that is not listed in section 552.136 must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

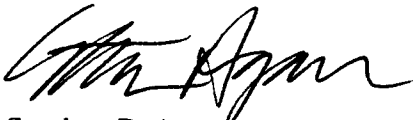
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 147793

Encl. Submitted documents

cc: Mr. Fred Pfeiffer
P.O. Box 548
Alpine, Texas 79830
(w/o enclosures)